



DOCKET NO. SPC-5069CNT6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Roger A. de la Torre Confirmation No.: 3761

Serial No.: 10/004,468 Examiner: Glenn K. Dawson

Filed: October 23, 2001

Title: LAPROSCOPIC ACCESS PORT FOR SURGICAL INSTRUMENTS OR THE HAND

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OFFICE OF PETITIONS

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

February 20,2004

(Date of Deposit)

Kimberly M. Moses

Name of person signing the Certificate

(Signature)

February 20,2004

(Date of Signature)

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Fax: 1-703-308-6916

REQUEST FOR RECONSIDERATION FOR A PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained. A petition to revive filed on November 3, 2003 was dismissed for failing to supply

APPLICANT HEREBY PETITIONS FOR THE REVIVAL OF THE ABOVE-IDENTIFIED APPLICATION

Note: A grantable petition required the following items:

- (1) Petition Fee;
- (2) Reply and/or issue fee including a Request for Continued Examination;

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- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity- fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity-fee \$ 1,330.00 (37 CFR 1.17(m))

2. Reply and/or fee:

The reply and /or fee to the above-noted Office including a Request for Continued examination is being filed herewith. (identify type of reply):

has been filed previously on _____.

charge the petition fee of \$950.00 to Account **10-0750/SPC-069CNT6/DLG** and for any additional fees required. This form is submitted as one original and two copies.

a. The Issue of \$ _____.

has been paid previously on _____.
 is enclosed herewith.

3. Terminal disclaimer with disclaimer fee:

Since the utility/patent application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith.

4. Statement: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [Note: The United States Patent and trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.00003(c), subsections (III) (C) and (D))].

5. Fee payment:

- Charge the petition fee of \$1,330.00 to Account **10-0750 /SPC-5069CNT6/DLG** and for any additional fee required. A duplicate of this petition is attached.
- A check in the sum of \$_____ is attached.
- Charge Account **10-0750 /SPC-5069CNT6/DLG** for any additional fee required.



Dean L. Garner, Esq.
Reg. No.: 35,877
Attorney for Applicant(s)

JOHNSON & JOHNSON
One Johnson & Johnson Plaza
New Brunswick, NJ 08933
Tel. No.: (513) 337- 8559
Date: February 20, 2004

2/4/04

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DEAN L. GARNER

NOTICE TO FILE MISSING PARTS
DECLARATION DUE

RESPONSE DUE

RESTRICTION REQUIREMENT DUE

FINAL REVIEW

FINAL REJECTION/NOTICE OF APPEAL DUE

CORRECTED DRAWINGS

ADVISORY ACTION REC'D

NOTICE OF ABANDONMENT REC'D

 Petition Dismissed : 01/28/04

COMMENTS, IF ANY

Jacqui
X 2836

Copy sent to
DG via fax 2/4/04
gpc



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JAN 30 2004

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JAN 28 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
de la Torre et al.
Application No. 10/004,468
Filed: October 23, 2001
Attorney Docket No. SPC-5068CNT6

This is a decision on the petition under 37 CFR 1.137(b), filed November 3, 2003, to revive the above-identified application.

The petition is DISMISSED.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office action mailed March 24, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on June 25, 2003. A Notice of Abandonment was mailed September 29, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,¹
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

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The instant petition lacks item (1). The amendment submitted with the instant petition on November 3, 2003, failed to place the application in condition for allowance. A proper reply to a final rejection under 37 CFR 1.113 may be: (1) an amendment which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee); or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. Petitioner must submit one of the above documents in order to revive the above-identified application. An advisory action from the examiner is enclosed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See *In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$950.00 extension of time fee submitted with the petition on November 3, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the existing Customer Window located at:

2011 South Clark Place
Crystal Plaza 1 Lobby
Room 1B03
Arlington, VA 22202

The centralized facsimile number is (703) 872-9306.

Telephone inquiries should be directed to Paralegal Liana Chase at (703) 306-0482.

Karen Creasy
Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Advisory Action